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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,857	10/27/2003	James D. Krol	6159	9239

6858 7590 08/05/2005

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EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/692,857

Applicant(s)

KROL, JAMES D.

Examiner

Lien T. Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 1761

Claims 1-15, 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 1-15 are directed to a food product comprising a base layer made of flour and a cheese mixture. The specification discloses 1 teaspoon of the flour is used to make the base layer. It is not seen how 1 teaspoon can form a layer. The specification is not enabling for the product being claimed. With respect to claim 24, the specification does not disclose how the pizza is sliced. It is not seen how the slicing step can take place when there is no rigid crust structure; the pizza is actually a mixture of ingredients and cheese. It is not seen how such mixture can be sliced.

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In all relevant claims, the term "low carbohydrate" is indefinite because it is a relative term; what would be considered as "low carbohydrate".

In claim 2, the term "high gluten flour" is indefinite because it is not known if the term indicates a flour having a high protein or a gluten flour which is a starch-free high protein flour in which the starch has been extracted.

Claim 3 has the same problem as claim 2.

Claims 12 and 13 have the same problem as claim 2.

Art Unit: 1761

Claims 16 and 22 have the same problem as claim 2.

Claim 24 is vague and indefinite. It is not known what applicant by slicing. It is not seen how the product can be slice when there is no rigid crust structure.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by the cookbook “ Fresh Ways with Breakfasts & Brunches”.

The cookbook discloses cheese griddle cake. The cake is made of formulated flour comprising flour and baking powder. The cake is made out of 1 table spoon of the mixture. The cake is a low carbohydrate food because it contains little flour. The claim does not define what would be considered as low. The cake is a base layer formed from formulated flour and a cheese mixture.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

Art Unit: 1761

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cookbook "Fresh Ways with Breakfasts & Brunches" in view of the cookbook "Joy of Cooking".

The cookbook does not disclose high gluten flour, the use of double acting baking powder, the amount of flour and the amount of mixture used as claimed and the additional layer and additional food product as claimed.

It would have been obvious to one skilled in the art to use high protein flour or gluten flour as shown by the Joy of Cooking when one wants a higher protein in the product. It would have been obvious to use double action baking powder when one wants faster reaction; such use is common in the art. It would have been obvious to use large amount of flour depending on the quantity made. It would have been obvious to use smaller or larger amount of the mixture depending on the size of the product being made. For example, if a smaller cake is desired, it would have been obvious to use smaller amount of the mixture than what is cited in the recipe. The recipe shows additional food ingredient is added to the cake. It would have been obvious to vary this ingredient to be fruit, vegetable, meat, cheese etc... depending on the taste and flavor desired. As to the product being a crustless pizza, this is a difference in the terminology. The food product as claimed comprises a base layer being a formulated flour and cheese mixture and at least one food layer; this is the food disclosed in the

Art Unit: 1761

cookbook. Whether it is called a pizza or a cake is a matter of preference. The claimed food product does not have the conventional structure of a conventional pizza product.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the recipe for "Crustless Pizza".

The recipe discloses a crustless pizza made out of a base layer of meat and seasoning. A measured amount of sauce is spread over the base layer. Toppings such as cheese, bacon, ham, mushrooms, olive and pepper are added. The pizza is baked in an oven at 350 degree for 15 minutes or until the cheese is golden. The article also teaches a low carbohydrate pizza in which the base layer is made of squash, eggs and mozzarella cheese.

The recipes do not teach forming a mixture of high gluten flour and baking powder, the baking temperature as claimed, freezing, thawing and reheating.

It is well known in the art to add flour to give texture to product or to line baking pan with flour to prevent sticking. Thus, it would have been obvious for one skilled in the art to add small amount of flour to the base mixture to give texture to the product or to sprinkle flour onto the baking pan to further prevent the product from sticking to the pan. It would have been obvious to add baking powder to create bubbling appearance or to give little rising to make a firm structure. This is well known in the art as it is

Art Unit: 1761

common to add baking powder in making pancake. The choice of flour to use depends on the nutrition wanted. Since it is a low carbohydrate product, it would have been obvious to use gluten flour so that there is no starch in it; this further reduces the amount of carbohydrate. It would have been obvious to use double acting baking powder when one wants a faster reaction. It would have been obvious to use higher temperature for shorter period of time. It would have been obvious to freeze the product for long term storage. When the product is frozen, it would have been obvious to thaw and reheat it to prepare the product for consumption. It would have been obvious to make any quantity flour depending on the number of product made. Since the flour is used as non-sticking agent and/or for added texture and not to form a crust, it would have been obvious to use a very small amount. It would have been within the skill of one in the art to determine this amount through routine experimentation.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lira discloses rolled food product having a base layer and filling layers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 4, 2005

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*